



2026:DHC:3557-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 24.12.2025

Judgment delivered on: 28.04.2026

Judgment uploaded on: *As per Digital Signature~*

- + **W.P.(C) 11126/2025 CM APPL. 45750/2025**
RAJASTHAN METALSPetitioner
versus
UNION OF INDIA & ORS.Respondents
- + **W.P.(C) 11127/2025 CM APPL. 45752/2025**
MICRO COILS AND REFRIGERATION PVT LTDPetitioner
versus
UNION OF INDIA & ORS.Respondents
- + **W.P.(C) 11128/2025 CM APPL. 45754/2025**
MARDIA METALSPetitioner
versus
UNION OF INDIA & ORS.Respondents
- + **W.P.(C) 11129/2025 CM APPL. 45756/2025**
SPIROTECH HEAT EXCHANGE PVT LTDPetitioner
versus
UNION OF INDIA & ORS.Respondents
- + **W.P.(C) 11130/2025 CM APPL. 45758/2025**
HAVELLS INDIA LIMITEDPetitioner
versus
UNION OF INDIA & ORS.Respondents
- + **W.P.(C) 11131/2025 CM APPL. 45760/2025**
PANKAJ METALSPetitioner
versus
UNION OF INDIA & ORS.Respondents
- + **W.P.(C) 11132/2025 CM APPL. 45762/2025**

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SHARMA
Signing Date: 28.04.2026
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versus
UNION OF INDIA & ORS.Petitioner
.....Respondents
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HONEYCOOL HVAC INDUSTRIES LLP
versus
UNION OF INDIA & ORS.Petitioner
.....Respondents
- + **W.P.(C) 12999/2025 CM APPL. 53206/2025**
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BMR HVAC LIMITED
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- + **W.P.(C) 13002/2025 CM APPL. 53214/2025**
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- + **W.P.(C) 13003/2025 CM APPL. 53216/2025**
FITSPARK INDIA PRIVATE LIMITED EARLIER
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- versus
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- + **W.P.(C) 13006/2025 CM APPL. 53222/2025**
DIWACH INDUSTRIESPetitioner
versus
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AMAPAI CORPORATION INDIA PRIVATE LIMITEDPetitioner
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MISTCOLD SALES AND SERVICES PVT LTDPetitioner
versus
UNION OF INDIA & ORS.Respondents
- + **W.P.(C) 19112/2025 & CM APPL. 79518/2025**
EPACK DURABLE LIMITEDPetitioner
versus
UNION OF INDIA & ORS.Respondents

Present: Mr. Balbir Singh, Sr. Advocate with Mr. Chirag Shetty, Mr. Udit Jain, Ms. Ayushi Agarwal, and Ms. Anam Khan, Advocates for the petitioner(s).

Mr. N Venkataraman, ASG, Mr. Aditya Singla, SSC, Ms. Samiksha Godiyal, SSC, Mr. Aakarsh Srivastava, SSC, Ms. Shreya Lamba and Mr. Dhananjay Gautam, Mr. Anand Pandey, Adv., Mr. Tenzing N. Bhutia, Mr. Ritwik Narayan Advs. for CBIC.



Mr. Bhagwan Swarup Shukla, CGSC, Mr. Kabir Hazarika, GP, Ms. Sarika Chalise, Mr. Mukesh Kumar Pandey, Mr. Ashutosh Pathak, Advs. for UOI.

Ms. Avshreya Pratap Singh Rudy, CGSC, Ms. Usha Jamnal, Ms. Prajna Pandita, Ms. Nyasa Sharma, Advs. for UOI.

Mr. Premtosh K. Mishra, Mr. Prarabdh Tiwari, Mr. Shrey Sharma, Advs. for UOI.

Mr. Jagdish Chandra Solanki, CGSC, Ms. Manya Saxena and Mr. Siddhartha Bajaj, Advs. for UOI.

Mr. Jitendra Kumar Tripathi, Mr. Sumit Kumar Raj, Advs. for UOI.

Dr. B Ramaswamy, CGSC for UOI.

Mr. Ripudaman Bhardwaj, CGSC, Mr. Kushagra Kumar, Mr. Amit Kumar Rana, Advs. for UOI.

Mr. Abhishek Gupta, CGSC, Mr. Shaswat Kumar Pandey, Mr. Dhananjay Singh, Advs for UOI.

Mr. Siddhartha Shankar Ray, CGSC, Mr. Atishay Jain, Adv for UOI.

Mr. Mukul Singh, CGSC, Mr. Adhiraj Singh, GP, Mr. Aryan Dhaka, Advs. for UOI.

Ms. Manisha Agarwal Narain, CGSC, Ms. Aditi Singh, GP, Mr. Nipun Jain, Advs for UOI.

Ms. Nidhi Raman, CGSC, Mr. Arnav Mittal, Mr. Akash Mishra, Advs for UOI

Mr. Rakesh Kumar, SPC, Mr. Sunil, Ms. Neha Sharma, GP Advs. for UOI

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT

V. KAMESWAR RAO, J.

1. These petitions have been filed laying challenge to the show cause notices issued by the respondents wherein, the preferential rate of duties under the Association of Southeast Asian Nations-India Free Trade



Agreement (“AIFTA”) on the import of copper tubes and pipes has been rejected on the sole ground that the impugned goods do not satisfy the condition of the Regional Value Content (“RVC”) addition of 35%. The petitioners have challenged the show cause notices on the basis that the same have been issued wholly without or in excess of jurisdiction and with presupposed conclusions. They have also challenged the letter dated 05.07.2023 of the Additional Commissioner of Customs, Jaipur whereby, all imports of copper tubes and pipes have been directed to be cleared without granting the benefit of the AIFTA on provisional basis upon furnishing bank guarantee and bond.

SUBMISSION ON BEHALF OF THE PETITIONERS

2. Mr. Balbir Singh, learned Senior Counsel for the petitioners along with Mr. Udit Jain has fairly submitted that the aforementioned writ petitions have a common factual background and has argued the above writ petitions collectively.

3. He submitted that there is no effective and efficacious and alternative remedy available with the petitioners and hence these writ petitions are maintainable. He stated that since the issue herein pertains to the AIFTA which the respondents herein have failed to follow and therefore, a question which is purely treaty based has arisen, therefore, this Court ought to entertain the present petition under Article 226 of the Constitution of India.

4. He has placed reliance placed upon a Supreme Court decision in the case of *Kothari Metals Civil Appeal No. 9010 of 2019* dated 25.11.2019 which was an appeal of a decision of the Bombay High Court in the case of *Purple Products Private Limited v. Union of Indian & Ors., 2025 SCC OnLine Bom 2367* to state that the decision therein, unequivocally held that



where the challenge concerns the efficacy or applicability of an international treaty, the adjudicating authority under the Customs Act, 1962 (the Act) cannot assume jurisdiction. The Bombay High Court had at the initial stage dismissed the petitions on the ground that the petitioners had an alternative statutory remedy under the Customs Act, 1962. It was the Supreme Court which had later clarified that treaty based jurisdictional questions fall within the cognisance of Constitutional Courts and cannot be relegated to the departmental authorities. The order of the High Court was set aside and the matter was remanded for adjudication on the threshold issue that existence of an alternative statutory remedy does not operate as a bar to maintain a writ petition raising such fundamental questions of law.

5. It was submitted that on exactly the same set of facts and circumstances, similar show cause notices were issued to other importers by the Jaipur, Principal Commissioner of Customs who are also respondents in the aforesaid writ petitions. He stated that the High Court of Rajasthan at Jaipur had admitted writ petition nos. 12924/2025, 12927/2025 and 12930/2025 based on the admissions of the Customs Authorities at Jaipur and the untenability of paragraphs 6.2, 6.3.3 and 6.3.4 of the show cause notices. According to him, notices have been issued to the respondents and also a stay has been granted on the operation of the show cause notices during the pendency of the said petitions. In this regard he has placed reliance on the order dated 26.08.2025 of the High Court of Rajasthan in the aforementioned petitions, wherein, the subject matter of import were also copper tubes and pipes. According to him, the entire allegation upon which the show cause notices issued by the respondents in the said case was that the goods did not allegedly satisfy the minimum RVC in the terms of



AIFTA for them to be eligible for preferential rates of duties. However, in view of the categorical admission of the respondents regarding the lacuna in the AIFTA in respect of the verification procedure and admission of non-verification of the Certificate of Origin (“COO”) by the Customs Authorities. The petitioners are entitled to the interim order. The Rajasthan High Court had admitted the said petitions. Since, these set of petitions share the same set of facts it was submitted by Mr. Balbir Singh that there is no alternative remedy available and these present petitions before this Court are maintainable.

6. Mr Balbir Singh has stated that the impugned show cause notices in paragraph 6.2 stated that the AIFTA does not provide for proper framework for verification and in light of these limitations, the respondents have adopted their own formula to determine the RVC.

7. According to him, if at all there were any shortcomings in AIFTA, then it was for the Government of India to address those shortcomings through a proper mechanism and in absence of any directions to this effect, from the Government of India and its counter party, the AIFTA is still valid. The validity of the AIFTA is further confirmed by the respondent no.2 in its reply and thus, the averment of respondent no.5 that there is a lacuna in the treaty, is without any basis. This factum has also been recognised by the Rajasthan High Court in its order dated 26.08.2025 wherein the respondents have highlighted a lacuna in the AIFTA and the overreach of their jurisdiction by the Customs Authorities while rejecting the benefit of the AIFTA.

8. It is his case that AIFTA is a complete code in itself and in any case, where there is a dispute between the AIFTA and the Rules of Origin 2009,



(ROO) the provisions of the AIFTA would prevail. The same has been accepted in Rule 8(3) of the Customs Administration of Rules of Origin under Trade Agreements Rules, 2020 (CAROTAR) read with instruction No.19/2022-Customs, dated 17.08.2022 and instruction No.23/2024-Customs dated 21.10.2024. As the AIFTA is valid and binding on the respondents, the rejection of benefits of valid COOs by the respondents is in excess of jurisdiction and without any authority. In this regard, he placed reliance of a decision of the Supreme Court in *Commissioner of Customs, Bangalore v. GM Exports, 2015 (324) ELT 209 (SC)*.

9. Mr. Balbir Singh is of the view that the AIFTA read with ROO clearly states that the benefit of the notifications must be granted upon furnishing a valid COO. In the present case, all the COOs are valid and the same have not been cancelled or revoked and even the issuing authority confirmed the authenticity of the COOs. Even if there were to be any dispute with regard to the determination of the origin of the product, Article 18 read with appendix D – Article 24 of the AIFTA which are the ‘Operational Certification Procedures for the Rules of Origin for the AIFTA’ provides that the disputes between the two countries is to be resolved through a dispute settlement procedure under the ASEAN-India Dispute Settlement Mechanism Agreement. However, in the present case, the respondents have directly issued the show cause notices without following the due process of law.

10. He stated that in the counter affidavit filed by the respondent no.2, more so, at paragraph 3, they have conceded to the position that the dispute settlement mechanism under the AIFTA, i.e., Article 24 is available *inter se* between the Member States and not between one business entity and another. Since, the present dispute relates to non-grant of benefits under the



AIFTA by the respondents despite the fact that the issuing authority in the exporting country, i.e. Vietnam has vide a letter dated 16.12.2024, 28.08.2025 and 15.09.2025 specifically stated that the COOs are genuine and satisfy the RVC criterion under the AIFTA. Therefore, this non grant of benefit creates a dispute between the two countries, which has to be resolved *inter se* between the States through respondent no.2 under the treaty mechanism and the customs authorities have no jurisdiction to unilaterally reject the benefit of the treaty without following the due process of verification. Accordingly, he stated that the impugned show cause notices rejecting the benefit of treaty, are bad in law.

11. Mr. Balbir Singh has argued that it is nobody's case that the Customs Authorities cannot investigate the genuineness of COO or issue show cause notices. He stated that the respondents can issue show cause notices only after following due process of verification of COO as per AIFTA, Rules of Origin 2009, the CAROTAR read with Section 28DA of the Act. He has stated that the process for verification under the AIFTA, read with ROO are as follows:-

- i) The importing party may request a retroactive check at random and / or when it has reasonable doubt regarding the authenticity of the document or the accuracy of the information regarding the true origin of the Goods in question.
- ii) The issuing authority shall conduct a retroactive check on the producers'/exporters' cost statement based on the current cost and prices within a six month time frame prior to the date of exportation.
- iii) The issuing authority shall respond to the request promptly and



reply within three months after receipt of the request for retroactive check.

- iv) In cases, where there is a reasonable doubt as to the authenticity or accuracy of the document, the customs authorities of the importing country may suspend the provision of preferential tariff treatment while awaiting the result of the verification.
- v) The retroactive check process including the actual physical process to determine whether the subject good is originating or not, should be completed and the result communicated within six months.
- vi) Customs authority of the importing country may request an importer for information and documents related to the origin of imported goods in accordance with its domestic laws and regulations before requesting the retroactive check.
- vii) Request for verification visits to the exporting party may be done under the exceptional circumstances.

12. It is the case of Mr. Balbir Singh, that the due process for verification of the COOs has not been followed by the customs authorities. In fact, the COOs were not verified and the admission on this account can be found in paragraphs 6.3.3 and 6.3.4 of the show cause notices and the same have been reiterated in the reply so filed by the respondents in these petitions. It is submitted that the respondents have acted while disregarding the procedure prescribed under the statutory framework by arbitrarily denying the benefits of the relevant exemption notifications and issued the impugned show cause notices without any authority or basis.

13. Mr. Balbir Singh has stated, that the AIFTA read with ROO



recognises only two methods for determining the RVC content i.e., namely the direct method and indirect method. He submitted that in the present case the suppliers have determined the RVC as per the direct method and has made the declaration in Form-I to that effect, that the RVC content as per the AIFTA in the impugned goods is more than 35%. Despite the suppliers adopting the direct method for determination of RVC in the impugned goods, the respondents have proceeded to determine the RVC as per a new method on the basis of total production of the suppliers which is not prescribed under the said formula. In this regard he has made a reference to paragraphs 5.1, 5.2, and 6.2 of the show cause notices. He stated that the respondents have devised an unauthorised method for computing RVC and on the basis thereof concluded that the goods do not satisfy the minimum regional content threshold of 35%. Such action is *ex facie* contrary to the provisions of AIFTA read with the ROO.

14. Mr. Singh has argued that the impugned action of the respondents in redetermination of RVC is barred on the principles of *res judicata* since the impugned show cause notices are in direct contradiction to the categorical findings recorded by the DGTR vide notification dated F.No.04/10/2020 dated 31.01.2022 in the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidised Articles and for Determination of Injury) Rules, 1995 proceedings (“CVD”) including the very same Vietnamese Exporters, Jintian Copper Industrial, (Vietnam) Co. Ltd. and Vietnam Hailiang Co. Ltd. wherein the DGTR in the final findings had examined the entire volume and value of export sales disclosed by the responding Vietnamese exporters and upon verification of their data came to the reasoned conclusion that the exports to India were the outcome of *bona*



fide manufacturing operations in Vietnam. These findings do not leave any scope for disputing the fact of manufacturing and value addition in Vietnam, and constitute binding determination which cannot be disregarded by the respondents. Hence, Mr. Singh stated that the respondent re-agitating the matter through the impugned notices is against the principles of *res judicata*.

15. Mr. Singh has also argued on behalf of the petitioners that the COOs have not been cancelled or revoked by the issuing authority. Therefore, the benefit of Notification No. 46/2011-Customs cannot be denied to the petitioners. Since the issuing authority in Vietnam which has issued the COOs is binding on the customs authorities and they cannot go behind the COOs in terms of the AIFTA read with ROO especially when the same has not been cancelled or revoked by the issuing authority. Furthermore, the issuing authority has since affirmed the genuineness of its COOs vide letters dated 16.12.2024 and 28.08.2025 this clearly proves that upon verification of the COOs the issuing authority being respondent No. 4 has found the COOs to be genuine and authentic and hence the petitioner have correctly availed the benefit of preferential treatment under AIFTA and there is no misrepresentation as to the RVC of the impugned goods. In this regard he has relied upon the decision of the Supreme Court in ***Union of India v. Azadi Bachao Andolan, (2004) 10 SCC 1***, wherein it had been held that a tax residency certificate issued by a foreign government under a treaty framework is conclusive and cannot be disregarded by the Indian authorities. The principle applies to the case of COOs under trade agreements like the AIFTA and once COOs are issued by the designated authority the of the exporting country, the said COOs are binding and the Indian customs authorities have no jurisdiction to question the authenticity of the same



except through the treaty prescribed verification process, which in the present case the respondents have failed to follow.

16. Another plea that has been taken by the petitioners is that respondent have proceeded on the basis of presumptions to compute the RVC in respect of the impugned goods without any verification and the same is evident from paragraphs 6.3.3 and 6.3.4 of the show cause notices. Mr. Singh is of the view that the respondents have rejected the benefit of COOs without any basis whatsoever. The flaw with which the show cause notices suffer from is that they are cryptic and vague and hence liable to be set aside on this ground alone. In this regard he has placed reliance on the decision of ***CCE v. Brindavan Beverages (P) Ltd., (2007) 5 SCC 388***. The COOs have been issued by the issuing authority in the exporting country which are still valid and binding upon the respondents and the issuing authority has affirmed the genuineness of COOs vide letters dated 06.12.2024 and 28.08.2025. It is his case that the show cause notices unilaterally reject valid COOs without providing any reasons.

17. It is the case of Mr. Singh that the petitioners have fulfilled all the conditions for availing the benefit under Notification No. 46/2011 dated 01.06.2011 read with Notification No. 189/2009 dated 31.12.2009 as they have satisfied all the three conditions of the aforesaid notification being; the imported goods are notified; the imported goods originated from Vietnam and; the COOs issued by the competent authority stated that the imported goods originated from Vietnam and the same have been reaffirmed as being genuine. He stated that the respondents have also rejected the benefits which were due to the petitioners on account of the aforesaid notifications without any basis.



18. Mr. Singh has argued that the extended period of limitation of five years under Section 28(4) of the Act has been wrongly invoked in the present cases as the demands have been raised for the disputed period majorly covering imports from 2019-2022 vide the impugned show cause notices especially when there is no fraud and suppression on part of the petitioners. He pointed to the fact that the demand is beyond the normal period of two years and is without jurisdiction. Further, the AIFTA and the ROO directs the issuing authorities to maintain the records for the COOs for a period of two years only. Which means that any demand of duty by invoking the extended period of limitation under Section 28(4) of the Act for five years is bad in law.

19. Mr. Singh has argued that the respondents are clearing the impugned goods for home consumption upon furnishing of bank guarantee and bond in terms of letter dated 05.07.2023 and that the respondents cannot suspend the operation of the treaty in perpetuity under the garb of investigation. It is an admitted case that in the present case no verification of the COOs has taken place. Further, the suspension of the AIFTA in any event cannot be stretched beyond a maximum period of one year i.e., for the entirety of the verification process. However, in the present case, it is an admitted fact that the investigation started in 2023 and the same ought to have been concluded in 2024. Since, this process has not been concluded which is clear from the fact that the impugned goods are even today being cleared upon furnishing bank guarantee and bond which means that the letter dated 05.07.2023, demanding bank guarantee is bad in law.

20. It is his case that the demand of bank guarantee by the respondents is against Rule 6 sub Rule 4(a) of CAROTAR clearly states that if customs



authorities start a verification process to check whether the goods qualify for preferential tariff benefits under a trade agreement at the time of import then they can temporarily suspend the concessional rate which is the lower rate of duty for those goods until the verification is completed. However, in the present case it is an admitted position that no verification was undertaken in accordance with the procedure prescribed under the CAROTAR.

21. Furthermore, the issuing authority vide its aforesaid letters confirmed that the COOs are genuine and valid and thus on this verification alone the provisional assessment of the bills of entry on furnishing of bank guarantee and bond would be in violation of Rule 6 of CAROTAR. Hence, it is submitted that the impugned letter dated 05.07.2023 ought to be set aside and the bills of entry ought to be finally assessed and granted the benefit of the aforesaid notification. He also stated that the bank guarantees along with the bond should be returned back to the petitioners.

22. Lastly, on the issue of territorial jurisdiction Mr. Singh has argued that these petitions are maintainable under Article 226 of the Constitution of India since the partial cause of action has arisen within the territorial jurisdiction of this Court as the registered offices of the petitioners are in Delhi; the AIFTA has been signed by the Ministry of Commerce which is based in Delhi and; the petitioners have imported the goods at ports being the inland container depots which fall within the territorial jurisdiction of this Court. He has cited the various ports which fall within the territorial jurisdiction of this Court to state that this Court has jurisdiction to entertain these writ petitions. He has given a brief summary of the same as follows:-

S. No.	Petitioner	Registered Office	Ministry of Commerce	Import Port



1.	Pallavi Copper Pipes Pvt. Ltd. (W.P. (C) 11132 of 2025)	New Delhi	New Delhi	INPTL6 (page 165 of Writ Petition)
2.	Micro Coils and Refrigeration Pvt. Ltd. (W.P.(C) 11127 of 2025)	New Delhi	New Delhi	INTKD6 (page 180 of Writ Petition)
3.	Havells India Limited (W.P.(C) 11130 of 2025)	New Delhi	New Delhi	INPTL6 (page 170 of Writ Petition)
4.	Pankaj Metals (W.P.(C) 11131 of 2025)	New Delhi	New Delhi	INTKD6 (page 153 of Writ Petition)
5.	Ess Kay Fabrication (W.P.(C) 13004/2025)	Rewar, Rajasthan	New Delhi	INGHR6 (page 198 of Writ Petition)
6.	Zeco Aircon (W.P.(C) 12999/2025)	Mumbai	New Delhi	INGHR6 (page 198 of Writ Petition)

23. Mr. Bhandari, learned Senior Counsel appearing in W.P.(C) 11130/2025 has only argued on the maintainability of the petitions as he has fairly submitted that the other aspects in this petition are one and the same as the ones argued by Mr. Singh. According to him, the show cause notices have been issued by the Commissioner is outside the territorial jurisdiction of this High Court although the registered office of the petitioner is located in Delhi. Hence, a partial cause of action has arisen within the territorial jurisdiction of this Court.

24. The present dispute pertains to the enforceability of the AIFTA, the same was entered into by the Ministry of Commerce, which is the respondent no. 2, located in Delhi and hence, another partial cause of action has arisen in Delhi.

25. He has stated that apart from the above, the petitioner has imported copper pipes and tubes at the inland container depot ports which are within the territorial jurisdiction of this Court. In this regard, he has placed reliance on the Bill of Entry No. 5054191 dated 15.03.2023 since the petitioner has



imported goods at ports, which are answerable to the Custom authorities in Delhi, the same has also been recorded in the show cause notice. Therefore, another cause of action arises in Delhi. He has referred to the Import Port INPTL6 in W.P.(C)11130/2025 to buttress his submissions.

26. Additionally he has relied upon a judgment of the Supreme Court in the case of *Rajendran Chingaravelu v. R.K. Mishra Additional Commissioner of Income Tax (2010) 1 SCC 457*, to state that the Supreme Court in that case had held that the High Court exercising jurisdiction in relation to the territories within which the cause of action arises wholly, or in part will have jurisdiction. He has also referred to the judgements in the cases of *Om Prakash Srivastava v. Union of India and Another (2006) 6 SCC 207*, *Navinchandra N. Majithia v. State of Maharashtra and Others (2000) 7 SCC 640* and *Kusum Ingots & Alloys Ltd. v. Union of India (2004) 6 SCC 254*. With regard to the merits of the petition Mr. Bhandari has stated that he wishes to adopt the submissions made by Mr. Balbir Singh.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

27. Mr. N. Venkataraman, learned ASG appearing on behalf of the respondent nos. 1 and 3, being the Ministry of Finance through its Secretary and the Director of International Customs Division, Central Board of Indirect Taxes in W.P.(C) 11129/2025, submitted that the stance of the aforesaid respondents be treated as one across all the petitions. He has submitted that the importing country has the authority to deny preference despite COO. He submitted that under the ASEAN-India Trade In Goods Agreement (“AITIGA”) India as the importing country is legally empowered to refuse or withdraw preferential tariff treatment even if a COO



has been issued by the exporting country provided that there are valid reasons to doubt that the goods fulfil the origin criteria. According to the Rules of origin and Operational Certification Procedures (“OCP”) under the AITIGA, which have explicitly contemplated such a situation. This agreement allows the customs authority of the importing nation to “*request a retroactive check at random and/or when it has reasonable doubt as to the authenticity of the COO or the accuracy of the information regarding the true origin of the products*”. Thus, while a COO is a necessary document for claiming preferential duty, it is not conclusively binding if the issuing circumstances or contents are questionable. Under the agreement, the importing country is also empowered to suspend preferential tariff concessions while verification is ongoing. If the verification procedures or evidence confirms that the goods do not meet the origin requirements, for example, insufficient RVC or false declarations, the importing country is well within its rights under the agreement to deny the preferential tariff benefit.

28. He stated that the AITIGA does not divest India as an importing nation of its sovereign right to protect revenue by investigating and rejecting unjustified claims of preference. Rather, it establishes a framework for lawful rejection of such claims. The Custom Authorities retain jurisdiction to examine and adjudicate origin related issues under domestic law read harmoniously with the AITIGA. Therefore, COOs is, subject to scrutiny and India can lawfully deny concessional tariffs where goods are found non-originating under AITIGA.

29. On the issue of requirement of verification before denial of preference, Mr. Venkatraman has argued that the AITIGA’s provision do



not make it mandatory for an importing country to seek verification from the exporting countries' authorities in every case before denying a preferential tariff claim. Instead, the agreement provides for verification only as an option. The operative language in the OCP is permissive, which states that the importing party may request a retrospective check in case where there is a reasonable doubt.

30. Mr. Venkatraman has pointed out to the fact that the language of the AITIGA specifically uses the word “may” instead of “shall”, which is indicative that the mechanism for requesting official verification is facilitative in nature and is not an obligatory pre-requisite. In other words, where Customs has reasons to believe that the goods do not qualify the AITIGA does not procedurally bar India from denying the preferential benefit. The intent of the agreement is only to encourage cooperation through verification but it stops short of legally requiring an importing country in this case being India to obtain confirmation from the exporting country before refusing the benefit. In practice, the Indian Customs Authorities usually seek clarification from the importer and/or through the inter-governmental verification procedure in cases of doubt, the agreement itself does not impose an absolute mandate to conduct a foreign verification enquiry prior to denial. The verification process is a right and a tool available under the agreement but it is not a binding one.

31. Once India chooses to invoke the verification mechanism, certain obligations arise for both the parties underscoring the fact that the AITIGA and verification process under the aegis of the treaty are intended to facilitate resolution of inquiries. For instance, where a verification request is made, the issuing authority of the exporting country is required to respond



within three months with the requested information. This time bound obligation on the exporting nation indicates that the agreement provides for a verification mechanism as a primary means to resolve questions regarding the origin of goods. He has stated that where the circumstances permit, India would typically seek verification rather than unilaterally rejecting a COO. However, the agreement does not prohibit India from denying preference without verification i.e., no clause of the agreement nullifies India's authority to act on clear evidence. In substance, though the AITIGA strongly encourages the use of this mechanism but it does not make prior verification a mandatory legal requirement before denial of preferential treatment.

32. Mr. Venkatraman has also referred to the OCP under the AITIGA more specifically to Rules 16 and 17 to underscore the facilitative nature of these provisions. The intent behind these provisions is that there is a process for cooperation and information sharing rather than imposing binding conditions on an importing country. In this regard, he has referred to the text of the agreement to emphasise the facilitative non-binding nature for the retroactive check in cases where there is a doubt. India is empowered to initiate verification but is not compelled to do so in every case. He has emphasised on the fact that discretion ultimately lies with the importing country to determine or decide when a verification request is warranted.

33. Mr. Venkatraman has argued that once such a request is made the provisions become binding upon the authorities of the exporting country. For instance the issuing authority must retain all relevant application documents for at least two years and shall furnish the information regarding validity of the COOs upon request from the importing country. In this manner the OCP establishes a structured avenue for verification placing



obligation on the exporting country to operate and respond while leaving the invocation of the said avenue subject to the decision of the importing country.

34. Mr. Venkaraman is of the view that the overall language of these rules confirm the facilitative intent behind these frame work. These rules are designed to assist in determining or ascertaining the truth through documentary checks, facilitating correspondence between the authorities of the two countries including on site visits to ensure the genuineness of the origin of goods. This procedure makes sure that only the genuine goods are given preferential treatment while the wrongfully claimed goods are not. Nothing in the AITIGA penalises the importing country for not invoking verification in a particular case. In fact on the contrary the AITIGA's framework provides that if cooperation is not extended by the exporting country the importing country can ultimately refuse preference. According to him this procedure is only there to help the verification of fact and not act as a curtailment of the powers of the importing country. Although these facilitative mechanisms bind both the parties to certain duties and obligations, it has to be noted that these rules do not bind India in a manner that India must always pursue verification or refrain from acting without a confirmation from the foreign authorities.

35. On the issue of the of domestic implementation under Section 28DA of the Act and the CAROTAR he has stated that the domestic law gives full effect to their AITIGA provisions by requiring that the verification be undertaken consistently with the terms of the trade agreement. The parity between the agreement and domestic law is evident from the fact that both are aligned in substance and procedure. He stated that where overwhelming



evidence emerging through independent investigation the agreement does not mandate verification as a precondition for denial of preferential benefits. The domestic implementation has institutionalised the ROO of the AITIGA whereby a certain procedure has been created for verification and in certain cases denial of benefit. This procedure ensures that India's action in rejecting improper claims of preference are grounded in national as well as international law.

36. Mr. Ventakraman has argued that the issuance of a show cause notice to an importer proposing to deny a claim under the AITIGA preferential tariff benefit is consistent with the agreement and Indian laws, more specifically in reference to Section 28 of the Act. The issuance of a show cause notice is mandatory whenever customs propose to recover duties or deny an exemption. The show cause notice acts as a safeguard of due process by placing the importer on notice and to provide a basis for proposed action at the same time according and opportunity to be heard. This procedure dovetails with the AITIGA's cooperative framework. In cases where doubts arise in respect to the origin of certain goods and services the importing country is entitled under the OCP to undertake verification and if these goods do not satisfy the prescribed origin criteria the importing nation within its right to deny the preference. In these cases the show cause notice is an instrument through which those verification outcomes and supporting evidence are formally put to the importer and thus this procedure is a vital bridge between India's domestic statutory framework and International Law.

37. It is his case that in cases where preliminary fact finding indicates that the goods fail to meet the origin test criteria the customs issue a show cause



notice under Section 28 of the Act proposing a denial of the preferential rates and to recover normal duties. This he stated is a lawful and a necessary step aligned with the AITIGA. This procedure gives an opportunity to the importer to rebut the findings by producing clarification or evidence in response to the allegation. Therefore, he stated this mechanism integrates the spirit of the AITIGA rather than conflicting with the domestic statutory requirement.

38. Mr. Venkatraman has also raised an issue with regard to the maintainability of the present petition since according to him a writ petition challenging a show cause notice is not maintainable in the ordinary course particularly when the statute provides a clear adequate alternative remedy. In the context of show cause notices issued for denial of benefits under the AITIGA the importer has an effective statutory remedy which entails that the noticee file a response to the show cause notice and contest the findings before the adjudicating authority. Upon receipt of a reasoned order if the noticee still feels aggrieved then an appeal can be preferred through the mechanism as established under the Act. Mr. Venkatraman has pointed out to the fact that the Indian Courts have consistently held that it is inappropriate for the Courts to interfere at the stage of issuance of a show cause notice by way of a writ petition except for in rare cases where there has been jurisdictional error or a gross violation of principles of natural justice. Since, the intent behind the show cause notice is a final determination of origin of the good but rather a preliminary step enquiring from the importer after which it would be determined by way of adjudication by the appropriate authority. He argued that the petitioner must exhaust the available statutory remedies before invoking writ jurisdiction.



39. The aforesaid principle underlines the fact that there is an existence of a statutory appellate remedy which renders a direct writ petition untenable and not maintainable. Therefore, he stated that the next procedural and logical step would be that the petitioners exhaust the departmental adjudication process before approaching a Writ Court. Once the adjudicatory procedures before the departmental authorities are exhausted the petitioners may approach the High Court by way of an appeal or revision but not through a writ petition unless exceptional circumstances warrant such recourse. According to Mr. Venkatraman the proper course for the importers in this case would be to raise all defences including the arguments which are based in the AITIGA before the adjudicating authority and thereafter before the appellate fora provided for under the statute. Given that such remedies are both available and adequate the High Courts have in the past declined to entertain writ petitions against show cause notices. This approach is consistent with the settled position of law which states where an efficacious alternative remedy exists the High Court ought not to exercise its writ jurisdiction and refrain from intervening at an interlocutory stage such as in a case where just a show cause notice has been issued. He is of the opinion that in the present case the writ petition challenging the show cause notices are liable to be dismissed as premature and not maintainable since the petitioners have other statutory routes to resolve the present issue.

40. Mr. Premtosh K. Mishra, learned counsel appearing on behalf of respondent no. 2 i.e. Ministry of Commerce and Industry in W.P.(C) 11129/2025 has stated that the stance of the Ministry of Commerce & Industry be treated as the same across the batch of these petitions and has further stated that AIFTA has been signed by India and the ASEAN



countries in the year 2009 and under its provisions, there is a dispute settlement mechanism, which is available between the States and there is no explicit or implicit reference that allows application of this dispute settlement procedure for resolution of disputes raised by an individual or private entity.

41. He has relied upon a judgment of Supreme Court in the case of ***Union of India v. Agricas LLP, 2021 (14) SCC 341*** to state that trade agreements between two sovereign nations are instruments of international law and do not create any direct private rights. The Trade Agreement establishes obligations between States and provides for a government to government consultation and dispute resolution mechanism and as such, no enforceable rights are conferred upon any private entities to challenge such a provision of the agreement against the State. Even if a private entity wishes to challenge this instrument, they must in the context of India, lay a challenge to a domestic instrument or against a decision taken within the scope of the trade agreement. According to him, a decision concerning violation of a trade agreement is only maintainable if that provision has been incorporated into municipal law passed by the Parliament or through subordinate legislations. He submitted that under the Government of India (Allocation of Business Rules, 1961), the role of Ministry of Commerce and Industry is limited to negotiation and conclusion of trade agreements including the one such as the AIFTA. Any customs related implementation, enforcement and administration of the AIFTA is within the purview of the customs authorities under the Department of Revenue.

42. He has submitted that the customs authorities are the competent authorities to address the present dispute. According to him, no provision of



the AIFTA has been directly challenged but rather only a decision of the custom authorities i.e., issuance of the show cause notice has been challenged before this Court. According to him, the Indian Customs Authorities are the implementing agency for tariffs, collection of duties, verification of COOs and the requirements under the ROO and other customs and trade facilitation matters. Accordingly, it is the customs authorities which take the necessary action against any such violations.

43. Further, appendix-D of the OCP for the ROO under the AIFTA provides that upon issuance and verification of the AIFTA COO and other related administrative matters, it would be Articles 16 and 17 of the appendix-D, which govern such issues. The same clearly provide that the importing party may request the importer for any documents related to the COO in accordance with its own domestic laws and regulations. Further, it would be the sovereign nation, which shall be responsible for providing legal sanctions against fraudulent acts related to the AIFTA COO. He has emphasised the fact that any verification is to be performed by the customs authority of the importing State and in accordance with the laws of the importing state.

44. Lastly, he submitted that the matter falls within the domain of the CBIC and the Department of Commerce has no direct involvement in the implementation of the ROO and prays that the Ministry of Commerce and Industry be removed from the array of respondents from this batch of petitions.

45. Mr. Aditya Singla, learned Senior Standing Counsel has entered appearance on behalf of respondent nos. 5 to 7 in W.P.(C) 11130/2025, respondent no. 6 in W.P.(C) 11128/2025, W.P.(C) 11129/2025, W.P.(C)



11131/2025; respondent nos. 5 & 6 in W.P.(C) 11132/2025 and respondent no. 5 & 7 in W.P.(C) 13005/2025 and W.P.(C) 13006/2025 on behalf of the Customs and has submitted that the present petition is not maintainable as the petitioners have alternative remedies under the Act available to them. The petitioners have been issued show cause notices and subsequently, personal hearings have been given, however, the petitioners have chosen not to reply to the said show cause notice and to participate in the adjudicating proceedings. The petitioners have sought to bypass the entire adjudicatory process by directly invoking Article 226 of the Constitution of India. According to him, these petitions are nothing but an abuse of process of law, which is impermissible save for the fact that if there is any exceptional jurisdictional error or if there is any violation of the principles of natural justice, which in this case have not been made out. In support of his submission, he has relied upon the judgments in the cases of *Titaghar Paper Mills Co. Ltd. v. State of Orissa, 1983, (2) SCC 433*, *CIT v. Chhabil Das Aggarwal, 2014 1 SCC 403*, *State of Goa v. Summit Online Trade Solutions (P) Ltd., (2023) 7 SCC 791*, *Kusum Ingots & Alloys Ltd. v. Union of India (2004) 6 SCC 254*, *Nawal Kishore Sharma v. Union of India (2014) 9 SCC 329* and *H.S. Rai v. Union of India (2022) SCC Online Del 2803*.

46. The customs authorities, according to him, are empowered under Section 28DA of the Act and the CAROTAR to verify the correctness of claim of preferential tariff treatment under a trade agreement including the genuineness of the COOs. Furthermore, Article 16 of the AIFTA ROO expressly allows for the importing party to request verification in case of reasonable doubt as to the authenticity or accuracy of the COO. Therefore,



an argument that the Indian authorities lack jurisdiction to question the COO is untenable.

47. He has stated that the petitioners herein filed bills of entry for copper tubes and pipes from Vietnam under CTH 7411 and paid zero Basic Customs Duty (BCD) and IGST at the rate of 18% by Customs notification no. 46/2011 dated 01.06.2011 read with Customs notification no. 189/2009 dated 31.12.2009. During the investigation, it was revealed that the import of copper tubes and pipes from Vietnam under AIFTA had rapidly increased to India and these goods are imported to India at a nil rate of duty. He has argued that the domestic production of copper in Vietnam was only 21,900 metric tonnes, despite of which Vietnam has emerged as a major source of copper products exported to India, which raises serious doubts about the authenticity of origin and the possibility of third-country routing, which is being used as a means to potentially exploit tariff concessions under the AIFTA. In support of his submission, he has relied upon the judgments of in the cases of *Prathibha Processor v. Union of India*, (1996) 88 ELT 12 (SC) and *U.M. Cables Ltd. v. Union of India*, 2017 (347) ELT 78 (Guj.).

48. He has stated that the relevant authorities reviewed the import and export data between Vietnam and other countries to find that there were several inconsistencies which were identified particularly regarding Vietnam's importation of a large volume of copper cathodes from non-ASEAN countries. This he stated suggests that a substantial portion of the copper cathodes originate from non-ASEAN countries and affects the accuracy of the declaration of the COO. The declarations made by key importers in their FORM-I and the CAROTAR states that the copper used in the production of the copper tubes and pipes meets the RVC requirements



under the AIFTA. Although, the authorities have reason to believe that the copper is not being imported from Indonesia and FORM-I has been wrongly declared in order to gain benefits under the AIFTA. As per Mr. Singla, a letter dated 24.05.2023 was issued to the importers for submitting the following documents as per Section 28DA:

- a) Cost Break up Sheet from the Supplier from 2019 onwards to till date (as per Calendar Year and Financial Year).
 - b) Cost of goods supplied by overseas supplies by indicating the Quantity, Cost of Raw Materials, Labour Cost and Overhead expenses.
 - c) Detailed description about value addition being carried out (From 2018-till date).
 - d) Quantity & Cost of Principal Raw material i.e., Copper Cathodes/Ingots (Purchased & Consumed) and Quantity of Finished Products Copper Tubes/Pipes Manufactured in each accounting Period, from, 2018 to till date.
 - e) Form-I for the imports made.
 - f) Value and quantity of total raw material showing country of origin of the raw material as mentioned in point 4 above, by giving name of Supplier. The complete details in tabular form which should add up to total copper processed by the company.
 - g) Total quantity of local Vietnam origin copper processed during 2018 to 2023 (each year wise) and the total quantity of Vietnam origin copper exported by the supplier to the Importer in India.
 - h) Audited Financial Statement of the Supplier from 2018 onwards.
49. In this regard, he has drawn our attention to the AIFTA ROO and the



Custom Tariff Rules, 2009, more specifically, to Articles 7, 14 and 16 of the AIFTA and Annexure-2 of Rule 4 of the ROO along with Rule 13 with Appendix D as well as Article 16A and 16B. Additionally, he has also relied on Articles 22 and 23 of the ROO along with Rules 5 and 13 of the Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member State of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009 (“CTR”) to state that the procedure laid down within this legal framework allows for the importing country to ensure the appropriate enforcement of the agreement in India including the fact that the customs authority in India are within their powers to investigate the veracity of the COO.

50. It has been ascertained during the investigation that two major exporters of copper tubes and pipes from Vietnam to India are M/s. Hailing Copper Manufacturing Co. Ltd. and M/s. Jintian Copper Industrial Co. Ltd. who have deliberately falsely declared the origin of copper used in their exports to state that the same is of Indonesian origin in order to satisfy the ROO under the AIFTA. However, enquiries have revealed that Vietnam does not possess adequate copper resource to support such large scale exports, instead these exporters have been sourcing copper from Hong Kong and China and thereafter, routing the same through Vietnam for re-export to India. This fact is substantiated with the fact that the Indian importers of copper tubes and pipes have been making payments into bank accounts located in mainland China even though the declared suppliers are based in Vietnam. In this regard, he has referred to the extracts of the show cause notice in the case of W.P.(C) 11130/2025 as an example to show the actual RVC contents, which reads as follows:-



M/s. Jintian Copper Industrial (Vietnam) Company Ltd. RVC ANALYSIS (Amount in VND Lakhs)						
S. No.	Particulars	2019	2020	2021	2022	2023
A	Total Raw Material Cost	22970105.54	33272644.18	58789335.22	88004282.28	86866265.61
B	Cost of Copper Cathode Originated from ASEAN Countries	10,639,743.13	7,676,978.24	17,383,485.76	27,842,531.32	27536888.42
C	Cost of Copper Cathode & Other Raw materials Originated from Non-ASEAN Countries	12,330,362.41	25,595,665.94	41,405,849.46	60,161,750.96	59,329,377.19
D	FOB Value of Copper Pipes	25,590,732.53	36,935,432.61	61,919,579.34	97,059,509.39	94955816.39
E	Non-AIFTA Content Percentage of FOB Value of Copper Pipes	48.18	69.30	66.87	61.98	62.48

TABLE-B

M/s. HAILIANG RVC ANALYSIS (Amount in VND Lakhs)						
S. No.	Particulars	2019	2020	2021	2022	2023
A	Total Raw Material Cost	93974741.62	96447284.94	84879819.99	122338484.43	125816709.25
B	Cost of Copper Cathode Originated from ASEAN Countries	16511836.45	26232185.02	16307580.55	24084834.81	26975897.00



<i>C</i>	<i>Cost of Copper Cathode Originated from Non-ASEAN Countries</i>					
		77,462,905.17	70,215,099.92	68,572,239.4 4	98,253,649.62	98,840,812.25
<i>D</i>	<i>Other Raw materials cost originated from Non-ASEAN Countries</i>					
<i>E</i>	<i>FOB Sales Value of Copper Pipes</i>	104,667,913.9 a	107,839,757.6 1	91,463,454.3 6	137,183,645.4 6	136,467,131.74
<i>F</i>	<i>Non-AIFTA Content Percentage</i>	74.01	65.11	74.97	71.62	72.43

51. It has further been revealed that many of the manufacturing units in Vietnam are owned or controlled by Hong Kong or China based parent companies and this pattern would suggest that Chinese companies deliberately route copper through Vietnam and other ASEAN countries to claim duty exemptions under the AIFTA while the actual origin is most likely Chinese or even other non-eligible countries. He has further argued that there is a strong possibility of data manipulation and origin falsification by the Chinese parent entities to channel their goods in India in circumvention of Indian customs regulations. By such suppression of facts and misrepresentation of origin even the Indian importers have sought to fraudulently availed or preferential duties under the AIFTA which otherwise they are not entitled to. This amounts to wilful false declaration and is in contravention of the CTR read with CAROTAR.

52. He stated at goods imported from ASEAN countries that merely undergo minimal processing without meeting the prescribed RVC criteria under the AIFTA ROO cannot be deemed as goods originating within the



ASEAN and hence, liable to be denied from the benefit of AIFTA.

53. In support of his case, Mr. Singla has relied upon in the judgement in the cases of *Purple Products Private Limited (supra)*, and *Trafigura India Pvt. Ltd. v. Union of India, 2023 SCC OnLine Guj 5086* of the Gujarat High Court.

54. He challenges the maintainability of these petitions on the ground of lack of territorial jurisdiction and the fact that only the show cause notices have been challenged. The show cause notices were duly issued to the petitioners and thereafter, three opportunities for personal hearings were granted despite of which the petitioner chose not to file any reply or participate in the adjudication proceedings and have instead chosen to approach this Court seeking to bypass the statutory process cannot now invoke extraordinary writ jurisdiction under Article 226 of the Constitution of India to bypass a lawful adjudicatory process. It is his case that no cause of action arises within the jurisdiction of this Court wholly or in part nor has it arisen within the jurisdiction of this Court. The entire sequence of events preceding the present proceedings from the issuance of show cause notice to the conduct of adjudication proceedings, the grant of opportunities of personal hearing, to the passing of the impugned order has all been conducted outside the jurisdiction of this Court. The mere fact that the petitioner carries on business or has a registered office in Delhi does not constitute a cause of action. He states that some of the present petitions are liable to be dismissed. In this regard, he has placed on record a chart to show that which petitions out of this batch ought to be dismissed on the grounds of lack of territorial jurisdiction:-



S No	Particulars	Imports at	Office Address	SCN issued by
1.	Rajasthan Metals vs. Union of India & Ors. W.P.(C)-11126/2025 CM APPL. 45750/2025 CM APPL. 45751/2025	ICD Tughlakabad, New Delhi ICD Garhi Harsaru, Gurugram, Haryana	B-34/6, 2nd Floor, G T, Karnal Road, North West Delhi - 110033.	Principal Commissioner of Customs (Import), ICD Tughlakabad, New Delhi
2.	Micro Coils and Refrigeration Pvt. Ltd. vs. Union of India & Ors. W.P.(C)-11127/2025 CM APPL. 45752/2025 CM APPL. 45753/2025	ICD Khatuwas, Alwar Rajasthan ICD Garhi Harsaru, Gurgaon Port of Chennai, Tamil Nadu ICD Patparganj, New Delhi	BA-72-B Janakpuri, West Delhi, Delhi, 110058	Principal Commissioner, Jodhpur (Preventive), Jaipur
3.	Mardia Metals vs. Union of India & Ors. W.P.(C)-11128/2025 CM APPL. 45754/2025 CM APPL. 45755/2025	ICD Tughlakabad, New Delhi ICD Garhi Harsaru, Gurugram, Haryana	B-34/6, 2nd Floor, G T, Karnal Road, North West Delhi - 110033	Principal Commissioner of Customs (Import), ICD Tughlakabad, New Delhi
4.	Spirotech Heat Exchangers Pvt. Ltd. vs. Union of India & Ors. W.P.(C)-11129/2025 CM APPL. 45756/2025 CM APPL. 45757/2025	ICD Tughlakabad, New Delhi ICD Garhi Harsaru, Gurugram, Haryana ICD Khatuwas, Alwar, Rajasthan Nhava Sheva Port, Jawaharlal Nehru Port Trust, Maharashtra	A-45, 46, & A51, 52, Industrial Kahrani, Bhiwadi Extn, Distt — Alwar, Rajasthan, 301019	Principal Commissioner of Customs (Import), ICD Tughlakabad, New Delhi
5.	Havells India Ltd. vs. Union of India & Ors. W.P.(C)-11130/2025 CM APPL. 45758/2025 CM APPL. 45759/2025	ICD Garhi Harsaru, Gurugram, Haryana ICD Dadri, Noida, Uttar Pradesh ICD Garhi Harsaru, Gurugram, Haryana Port of Chennai, Tamil Nadu Mundra Port, Gujarat ICD Gurgaon Patli, Haryana ICD Patparganj, New Delhi	SP1-133, RIICO Industrial Area, Ror Ghiloth, Distt Alwar-301706	Principal Commissioner, Jodhpur (Preventive), Jaipur
6.	Pankaj Metals vs. Union of India & Ors. W.P.(C)-11131/2025 CM APPL. 45760/2025 CM APPL. 45761/2025	Mundra Port, Gujarat ICD Tughlakabad, New Delhi	46, Ajmeri Gate, North Delhi, Delhi- 110006,	Commissioner of Customs, Mundra Port, Gujarat
7.	Pallavi Copper Pipes Pvt. Ltd. vs. Union of India & Ors.	ICD Khatuwas, Alwar, Rajasthan ICD Dadri, Noida, Uttar	16 Birbal Road, Jungpura Ext., New Delhi, Delhi,	Principal Commissioner of Customs (Import),



	W.P.(C)- 11132/2025 CM APPL. 45762/2025 CM APPL. 45763/2025	Pradesh ICD Gurgaon Patli, Haryana ICD Garhi Harsaru, Gurugram, Haryana	110016	Jodhpur (Preventive), Jaipur
8.	Honeycool Vs. Union of India & Ors. W.P.(C)-12998/2025 CM APPL. 53203/2025 CM APPL. 53204/2025	ICD Garhi Harsaru, Gurugram, Haryana ICD Tughlakabad, New Delhi	KH NO. 14/12/2, Shamlaka, South West Delhi, New Delhi - 110037	Principal Commissioner of Customs (Import), ICD Tughlakabad, New Delhi
9.	Zeco Aircon Limited Vs. Union of India & Ors. W.P.(C)-12999/2025 CM APPL. 53206/2025 CM APPL. 53207/2025	Nhava Sheva Port, Jawaharlal Nehru Port Trust, Maharashtra ICD Garhi Harsaru, Gurugram, Haryana ICD Dadri, Noida, Uttar Pradesh	Office No. 105, First Floor, Padma Tower 1, Rajendra Place, Patel Nagar , New Delhi - 110008	Commissioner of Customs NS-III, Jinch, Nava Sheva Port, Maharashtra
10.	BMR HVAC Limited Vs Union of India & Ors. W.P.(C)-13001/2025 CM APPL. 53212/2025 CM APPL. 53213/2025	ICD Tughlakabad New Delhi Nhava Sheva Port, Jawaharlal Nehru Port Trust, Maharashtra ICD Dadri, Noida, Uttar Pradesh ICD Patparganj, New Delhi	Plot No. M-137, MIDC, Waluj, Aurangabad, Maharashtra, 431136	Principal Commissioner of Customs (Import), ICD Tughlakabad, New Delhi
11.	Heatcraft Industries Vs Union of India & Ors. W.P.(C)-13002/2025 CM APPL. 53214/2025 CM APPL. 53215/2025	ICD Tughlakabad, New Delhi	Plot No. 3/26 Ajanta Industrial Complex, Industrial Area, Site 2, Loni Road, Mohan Nagar Ghaziabad, Uttar Pradesh, 201007	Principal Commissioner of Customs (Import), ICD Tughlakabad, New Delhi
12.	Fitspark India Vs Union of India & Ors. W.P.(C)- 13003/2025 CM APPL. 53216/2025 CM APPL. 53217/2025	ICD Tughlakabad, New Delhi (via Nhava Sheva, India)	135, Engineers Enclave, 2nd floor, Pitampura, New Delhi - 110034	Principal Commissioner of Customs (Import), ICD Tughlakabad, New Delhi
13.	Ess Kay Vs Union of India & Ors. W.P.(C)-13004/2025 CM APPL. 53218/2025 CM APPL. 53219/2025	ICD Khatuwas, Rajasthan ICD Garhi Harsaru, Gurugram, Haryana	Plot No. 351, Sector -3, Phase- II, HSIIDC Growth Centre, Bawal, Rewari- 123501	Principle Commissioner of Customs Jodhpur (Preventive), Jaipur
14.	Edgetech Vs Union of India & Ors. W.P.(C)-13005/2025 CM	ICD Garhi Harsaru, Gurugram, Haryana ICD Tughlakabad, New Delhi	403 - 404, Gopal Heights, Netaji Subhash Place, Pitampura, Delhi,	Commissioner of Customs ICD Patparganj & Other ICDs, Delhi



	APPL. 53220/2025 CM APPL. 53221/2025		110034	
15.	Diwach Industries Vs. Union of India & Ors. W.P.(C)-13006/2025 CMAPPL. 53222/2025 CM APPL. 53223/2025	ICD Garhi Harsaru, Gurugram, Haryana ICD Patparganj, Delhi ICD Tughlakabad, New Delhi	A-213, RIICO Industrial Area Ghiloth, Alwar, Rajasthan, 301019	Commissioner of Customs ICD Patparganj & Other ICDs, Delhi
16.	Amapai Corporation India Private Limited Vs. Union of India W.P.(C)-19108/2025 CM APPL. 79511/2025	ICD Patparganj, Delhi and Other ICDs	B – 2, Sector – 2 Noida, Guatam Budhha Nagar Uttar Pradesh – 201 301	Commissioner of Customs ICD Patparganj & Other ICDs, Delhi
17.	Koolking Udhyog Private Vs. Union of India & Ors. W.P.(C)-19110/2025 CM APPL. 79514/2025 CM APPL. 79515/2025	ICD Dhandari Kalan, Ludhiana, Punjab ICD Sahnewal , Ludhiana, Punjab ICD Chawapail, Ludhiana,Punjab ICD Dadri, Noida, Uttar Pradesh ICD Khatuwas, Alwar, Rajasthan ICD Garhi Harsaru, Gurugram, Haryana ICD Tughlakabad, New Delhi	Dhuri Road Malerkotla, Sangrur Punjab 148023	Principal Commissioner Of Customs, Ludhiana
18.	Mistcold Sales and Services Vs. Union of India & Ors. W.P.(C)-19111/2025 CM APPL. 79516/2025 CM APPL. 79517/2025	ICD Tughlakabad, New Delhi	721- Hemkunt Chambers, 89- Nehru Place, Contact No: 26288122, New Delhi, South Delhi , Delhi, 110019	Principal Commissioner of Customs (Import), ICD Tughlakabad, New Delhi
19.	Epack Durable Limited Vs Union of India & Ors. W.P.(C)-19112/2025 CMAPPL. 79518/2025 CM APPL. 79519/2025	ICD Dadri, Noida, Uttar Pradesh ICD Garhi Harsaru, Gurugram, Haryana Chennai Sea Port, Chennai, Tamil Nadu ICD Tughlakabad, New Delhi Delhi Air Cargo, Delhi	A-1, A-2, Elcina Cluster, Salarpur, Bhiwadi, Rajasthan -301019	Principal Commissioner of Customs, Noida

55. Furthermore, it is settled law that a writ petition does not lie against a show cause notice until and unless it is demonstrated that the notice is issued



without jurisdiction or if there is a patent violation of principles of natural justice and in this case, Mr. Singla has argued that there is no violation of either of the aforementioned.

56. In this regard, he has relied on Articles 7 and 14 of the AIFTA and the ROO of the AIFTA, more specifically, at Rules 1(c), 1(d), 1(e), 4, 12, 13 and Appendix D read with Articles 15, 16 and 20 for implementation of Rule 8(c). Additionally, he has also drawn our attention to the CAROTAR, more specifically, to Rules 3(a), 3(c), 3(d), 4, 5, 6 and 8 read with Form-I, Section II and Section III, ROO and Section 28DA of the Act.

57. He has also stated that as per Article 253 of the Constitution of India the Parliament has inter-alia the power to make a law for implementing any treaty, agreement or convention with any other country. Accordingly, the relevant domestic/municipal law which incorporates the provision of the treaty are the ROO, which have been made in compliance of Section 5(1) of the Customs Tariff Act, 1975 (CTA). He states that the ROO incorporate the Rules as contemplated under the AIFTA.

58. On a conjoint reading of the above, it is clear that there is a consistency between the Municipal Law and the International Law. The said procedure permits verification of the COO and in any event, the AIFTA permits that preferential duty can be suspended as per Appendix-D Article 16(a)(iii). The Customs Authorities are empowered under Section 28DA of the Act and CAROTAR to verify the correctness of the claims of preferential tariff treatment under the AIFTA including the genuineness of the COOs. Article 16 of the AIFTA specifically allows that the importing party may request for a verification if there is a reasonable doubt as to the authenticity of the COO or the accuracy of the information regarding the



true origin. Hence, the petitioners' claim that the Indian authorities lack jurisdiction to question the authenticity of COOs is untenable.

59. Mr. Singla stated that the show cause notices have been issued by the competent authority in exercise of statutory powers and the petitioners have been given due opportunities to submit the written statements of defence as well as opportunities to be heard in person. The said show cause notices are only a vehicle provided for verification mechanism contemplated under the treaty and the municipal laws of the country, more specifically, Section 28DA of the Act. The entire challenge raised by the petitioner proceeds on a fundamental misconception of law namely that the AIFTA by itself restricts the statutory powers of the Indian Customs Authorities. This assumption on behalf of the petitioners is incorrect since under the Constitution of India, a treaty is executed by the Executive but becomes enforceable in India only to the extent it is incorporation in the municipal law by the Parliament and it is this portion which can be enforced by the Indian Courts. Therefore, the AIFTA is enforceable in India only to the extent that the Act, more specifically, Section 28DA read with ROO and the CAROTAR.

60. He has placed reliance on the judgments in the cases of *Purple Products Private Limited (supra)*, and *Trafigura India Pvt. Ltd. (supra)* to state that a mere production of COO does not confer an indefeasible right to claim preferential tariff treatment. According to him, the COO is only a *prima facie* evidence of origin and the importing countries' customs authorities are legally empowered to verify whether the substantive ROO including RVC requirements are actually satisfied or not. The Courts have in the said judgment recognised that the burden of establishing eligibility for preferential treatment lies squarely on the importer and the custom



authorities are not bound to grant preferential treatment, merely because the COOs have not been cancelled by the issuing authorities. The Courts have also held that the issues relating to origin verification and value addition involve disputed questions of fact which may be examined in an adjudication proceeding and are not amenable to writ jurisdiction. He has stated that the issuance of show cause notices are supported by judicial precedents and law.

61. He relied on a judgment of the Supreme Court in *Assessing Office Circle (International Taxation) v. M/s Nestlé SA, (2023) 458 ITR 756* wherein it has been categorically held that an international treaty or an agreement does not automatically become enforceable in domestic law unless it has been incorporated by an act of Parliament, where the Parliament has enacted a statutory framework to implement a treaty, rights, obligations and powers of authority governed by domestic statutes and treaty provisions cannot be relied upon to dilute or override express statutory provisions. Applying the said principle, he submitted the AIFTA is enforceable in India only through Section 28DA of the Act, the ROO and the CAROTAR.

62. He stated that it is an admitted position of fact that the goods are declared as originating from Vietnam; however, the country of origin declaration alone is not conclusive for claiming preferential tariff treatment. As per Section 28DA(2) of the Act, the submission of the COO does not absolve the importer of the responsibility to establish compliance of the origin criteria. This burden squarely lies on the petitioners and not the respondents or the foreign issuing authority. It is incumbent on the petitioners that they have the opportunity to discharge the said burden of



proof during the adjudication process.

63. According to Mr. Singla, under Rule 13 of the OCP (Annexe 8), the importer is required to submit the COO along with the supporting documents as required by the Customs Authorities in accordance with the Rules and Regulations of the importing country. While Rule 13(3) provides that the clarification furnished by the issuing authority could be considered but their acceptance is not mandated. The Rules clearly preserve the discretion of the importing authority to assess whether such clarifications satisfactorily address the grounds of denial. Where the clarifications are found to be inadequate or insufficient, the customs are legally empowered to maintain the rejection of preferential tariff treatment in accordance with law.

64. It is his case that Rules 18 and 19 of the OCP further empowers Customs to suspend preferential treatment, conduct retroactive cheques and in exceptional cases conduct verification visits. None of these provisions mandate that customs must first resort to foreign authorities. Also, the terminology in Rules in every aspect includes “*may*”, which clearly states that is exhaustive and not conclusive. In the present case, the petitioner sought and analysed extensive information from the importer and supplier and this was sufficient to form a *prima facie* view and hence, no violation of the OCP has occurred. In this regard, he states that the Article 16 of the AIFTA is synchronised with Section 28DA of the Act and the CAROTAR.

65. He stated that Article 24 of the AIFTA which is the dispute settlement mechanism is not a bar to domestic verification procedure. It is his case that Article 24 only applies between sovereign contracting states and not to importer specific verification or adjudication under Domestic Law. The importer cannot compel that Indian customs authorities to invoke diplomatic



or treaty dispute mechanism.

66. Mr. Singla stated that the respondents sought information under Article 16(b) and Section 28DA of the Act and the information was supplied and analysed by the respondents thoroughly and after the said analysis and compliance to the statutory requirements.

67. Mr. Singla submitted that in the instant case, the foreign supplier of the petitioner has not provided any documentation confirming segregation between the raw materials sourced from ASEAN countries and from those sourced from non-ASEAN countries. Without such segregation and traceability records, it is impossible to verify whether the copper used in the exported goods was from ASEAN origin material as claimed, which is a fundamental requirement for establishing entitlement to preferential duty.

68. In the absence of the aforementioned information, it is not possible for the respondents to conclusively determine that the imported goods complied with the originating criteria under the AIFTA. In the absence of corroborative evidence regarding material segregation, batch tracking and production logs cannot be concluded that the COOs and the commercial invoice are sufficient for claiming preferential treatment. He stated that in order to overcome such practices regarding misrepresentation or misstatement of origin must be carefully examined in the process of verification by the proper officer. Since, the COOs did not truly reflect the origin of the goods, it was pertinent in such a background that the competent authorities scrutinised the material before granting preferential duty benefit.

69. Mr. Singla is of the view since that it was not possible to ascertain whether the copper used in the manufacture of goods exported to India originated or were not originating in the said ASEAN countries using the



direct method provided in the AIFTA ROO. Accordingly, as these facts could not be verified through the direct method, the customs authorities resorted to the indirect method of RVC calculation to determine the true origin of goods which essentially involves computation of the percentage value of non-ASEAN materials in relation to the FOB price of the finished product. These methods are prescribed in the AIFTA itself vide Rule 4 (Not Wholly Produced or Obtained Products) Annexure-2, hence, action of the respondent is within the ambit of the treaty not contrary.

70. It is submitted that notification 189/2009 implements the AIFTA ROO more specifically in reference to Rule 12 to address fungible materials like copper cathodes and it allows the exporters to use inventory management systems [First-In-First-Out (FIFO), Last-In-First-Out (LIFO) and weighted average method]. The exporters must follow a consistent method based on generally accepted accounting principles and must produce documentary evidence of the operation of that method so that the respondents can verify the origin claims.

71. Mr. Singla has stated that the audited financial statements of M/s. Jintian Copper Industrial (Vietnam) Ltd., which is the foreign supplier of the petitioner follows the Perpetual Weighted Average Method for inventory valuation. In the case of M/s. Hailiang Vietnam Copper Manufacture Co. Ltd., which is the other foreign supplier of the petitioner has not shown, which method they use for inventory management. Under the system, the origin ration of ASEAN and Non-ASEAN cathodes necessarily changes with new receipt and export consignments must reflect the average ratio prevailing at the time of production. With this, Mr. Singla states that one can infer that every new receipt of cathodes changes the average cost and the



average origin ratio of the entire stock pool. Once the factory takes copper cathodes out of stock to make tubes, it does not use the original price of origin of each shipment instead it uses the blended average cost and blended origin ratio of the whole stock at a moment. So, every shipment is valued based on that running average and not one specific lot, which means the ratio does not remain fixed, it shifts whenever a new shipment arrives.

72. When the Indian Customs requested supporting records the foreign suppliers were unable to produce the detailed ERP ledger or stock movement documents that would normally show the running weighted average of each receipt and the issue records for production batches i.e. when raw materials are taken out of the warehouse and send to the factory floor to make the finished goods, which is when a note or entry is made in the system. That note would show what quantity was taken on what date and for which production ran or the batch details. These factors are called issue records for production batches and they prove how much material went into each batch of finished products and how the ASEAN cathodes were blended with other imports in inventory pool.

73. Mr. Singla submitted that only a summary allocation for a shipment under COO was provided while the summary shows the presence of Indonesian origin cathodes; it does not demonstrate how the perpetual averaging system was actually applied over time. This according to Mr. Singla has created certain problems such as under the perpetual weighted average systems, the ratios of ASEAN and non-ASEAN content changes as new material arrives. Without a stock ledger maintaining each transaction the Indian Customs cannot confirm the ratio applied to the month wise export, which truly reflects the weighted average at that point in time. A



single shipment level summary is not enough for this purpose as Rule 12 of the ROO requires a verifiable audit trail of the inventory method in operation. Thus, Rule 12 precisely exists to avoid cherry picking of favourable lots. The foreign suppliers declared the weighted average method in its audited financial statement but failed to produce the detailed records that prove it was applicable in practice. This gap makes it impossible to verify whether the ASEAN origin cathodes were consistently average into production stock as required. As a result, the origin claim under the AIFTA remains doubtful as full documentary evidence (ERP records, GRNs, issue slips, stock cards) were not produced. In the absence of continuous inventory records, there is a reasonable doubt created in the minds of the Customs Authorities as to whether the RVC criterion under AIFTA has been correctly fulfilled. When fungible originating and non-originating inputs are mixed and the exporter failed to substantiate with verifiable records the method of accounting segregation such omissions creates a reasonable doubt for customs regarding whether the RVC criteria was correctly met when ASEAN originating and non-ASEAN originating cathodes were mixed. The law places the onus on the importer to prove fulfilment of RVC beyond doubt and in the absence of such proof, the respondent is justifying in questioning the origin claim. The petitioner's failure to produce inventory based evidence as required under Rule 12 raises a reasonable doubt and therefore, the respondent has appropriately issued a show cause notice calling upon the petitioner to respond to the same and provide necessary information if available for due adjudication.

74. The contentions raised by the petitioner in regard to the Free on Board (FOB) value the manner of computation of RVC the insistence on



consignment wise calculation and the assertion that value addition exceeds 65% and this raises a pure question of fact which cannot be adjudicated under the writ jurisdiction as per Article 226 of the Constitution of India. The present case involves invoices from third parties which has a direct bearing on the computation of the RVC particularly where discrepancies exists between the values declared in the COO and the commercial invoices.

75. The determination of origin in the present case is governed by Rule 12 of the ROO under the AIFTA which clearly provides that where a product is manufactured using a mix of ASEAN originating and non-ASEAN originating material that are mixed or physically combined the origin of such material is to be determined based on generally accepted accounting principles of stock control or inventory management followed in the exporting country. Thus, the Rule itself recognised that physical segregation or consignment wise co-relation of inputs is not required and what is relevant is whether the exporter maintains a reliable and recognised system of inventory records.

76. Mr. Singla has stated that the show cause notices record that after detailed examination of the material placed by the importer to state that the consignment wise co-relation between originating and non-originating materials could not be established. The importer failed to furnish verifiable and complete data to enable such a co-relation. The information supplied during investigation was found to be incomplete, non-specific and insufficient to enable the customs authorities to independently verify the claimed value addition. The show cause notices further record that the absence of reliable and verifiable data, the method of computation adopted by the importer could not be tested or validated in accordance with the



ROO. The difficulty in verification arose not due to arbitrariness on the part of the Customs Authorities but solely due to the failure of the importers to substantiate their claim with supporting documentary evidence.

77. As per Mr. Singla, the petitioners have not substituted, modified or invented a new formula for RVC computation. The respondents have merely questioned the verifiability, accuracy and sufficiency of the data furnished by the importer for applying the prescribed formula. Such a scrutiny is expressly contemplated under the statutory schemes governing claims of preferential tariff treatment.

78. Whether FOB value are correctly declared or whether the RVC content has been computed in accordance with the applicable ROO and whether the importers methodology satisfies the prescribed criteria, such matters which require detailed examination of evidence fall within the exclusive domain of adjudication proceedings. These issues cannot be conclusively determined in the present writ proceedings. Accordingly, the challenge to the show cause notice on the ground of alleged errors in FOB valuation or RVC computation is premature and misconceived. In such circumstances, the respondents are fully justified in seeking corroborative evidence such as manufacturer invoices, back to back purchase orders and shipping documents to establish a clear correlation between the goods imported and those certified for preferential origin.

79. As per Mr. Singla the investigation further revealed that FORM-I declaration under the CAROTAR were mechanically filled by the importer claiming compliance with the RVC requirement without furnishing verifiable supporting data. Such unsupported declaration defeats the very object of the CAROTAR which places an affirmative obligation on the



importer to truthfully and correctly substantiate the origin claims. Such misuse itself constitutes an independent ground for verification and issuance of show cause notice.

80. Mr. Singla has stated that the respondent/department places reliance on the CBIC instruction no. 23/2024-Customs, which clarifies that India as importing country is legally authorised to deny preferential tariff treatment even where a COO has been produced provided there are valid reasons to doubt the origin of goods. The instruction expressly recognises that a certificate of origin is not conclusive and that verification is necessary where suspicious circumstances exist.

81. He contended that the reliance placed on the CBIC instruction no. 19/2022-Customs is misplaced. The said instruction merely clarifies that in case of conflict, the provisions of trade agreement shall prevail. However, it does not prohibit the verification or bar the denial of preferential benefit where the importer fails to establish compliance with the origin criteria under the trade agreement itself. He stated that the impugned show cause notices have been issued strictly in accordance with the Act. He stated that the present writ petitions are premature and seek to bypass the adjudicatory process of law and therefore, deserve to be dismissed.

REJOINDER SUBMISSIONS ON BEHALF OF THE PETITIONERS

82. Mr. Balbir Singh has contended that the reliance placed by the respondents on the judgments in the cases of *Purple Products Private Limited (supra)*, *Trafigura India Pvt. Ltd. (supra)* and *Alfa Traders v. Commissioner of Customs, Cochin, 2007(217) ELT 437* are not applicable in the present cases as the facts in the aforementioned judgments are completely different. Furthermore, these decisions cannot be relied upon in



the present case as the customs authorities had undertaken verification as per the AIFTA read with the ROO by way of retroactive check and later a verification visit to verify the regional value content in the tin ingots and the genuineness of COO. However, in the present case, the show cause notices have been issued without following the process of law and as such the decisions relied upon by the respondents are distinguishable. The decision in the case of *Alfa Traders (supra)*, according to him, is not applicable in the present case as in that case the Tribunal had refused to accept the COO as the importer had not submitted any substantive evidence that the cloves had actually grown in Pakistan. It is submitted that in the present case, all the substantive evidence in the form of COOs, invoices, Form-I etc., have been provided to the customs authorities. Further, the exporters have also submitted workings showing the AIFTA content is more than 35% in the case of direct formula and less than 65% in the case of the indirect formula. It is his case that the issuing authority in Vietnam, i.e., respondent no.4 has issued a letter dated 28.08.2025 stating that all the COOs in respect of the impugned goods consigned to the petitioners are genuine and satisfy the RVC contents. Thus, all the substantive evidence supports the fact that COOs are genuine and same cannot be unilaterally denied without any basis.

83. Mr. Balbir Singh has stated that the primary grievance in the present petition is that the due process of verification as envisaged in the treaty and incorporated in the domestic law has not been followed. The ROO must be followed and the denial of the benefits thereof have been done in complete contravention of the same and no explanation has been provided by the issuing authority. The petitioners' primary case is not that the proper course which has not been followed in this particular petition is Article 24 of the



AIFTA which provides the dispute resolution mechanism. The ROO is the domestic legislation which incorporates the AIFTA as domestic law. These rules are very much applicable to the imports in question and they continued to be in force. The CAROTAR rules are in addition to these rules and do not replace the earlier rules.

84. Section 28DA(4) of the Act specifically provides that the verification has to be in line with the trade agreement. The subsequent circular dated 21.10.2024 specifically clarifies the position that the information sought and the verification must be consistent with the trade agreement. The ROO as well as the CAROTAR do not allow for denial of exemption notification without following the verification process. Rule 6(7) of the CAROTAR specifically provides for denial of preferential claim of duty without verification in specific circumstances only, which is not the case here.

85. He stated that insofar as Article 24 of the AIFTA is concerned, there is no requirement of incorporation of the same in domestic law. A dispute settlement mechanism within an international treaty operates on an international plane to resolve conflicts between the two sovereign states distinguishing it fundamentally from the substantive provisions that regulate private conduct or rights within the domestic territory. While the substantive rules of a treaty such as tariff adjustment or rules of origin must be enacted into domestic legislation in order to create enforceable municipal laws; the dispute resolution mechanism is a procedural apparatus designed for treaty signatories only. Incorporating the dispute settlement mechanism into national law is therefore legally redundant and conceptually flawed as the domestic courts neither possess the jurisdiction nor the capacity to adjudicate international treaty disputes and the mechanism itself does not



impact domestic legal rights until an international ruling specifically mandates a legislative change. He has argued that the petitioners are not seeking that the dispute resolution procedure be followed in the case of the petitioners.

86. Mr. Balbir Singh submitted that the petitioners in the aforesaid writ petitions have challenged the show cause notices issued by the respondent wherein the preferential trade of duties under the AIFTA on import of copper tubes and pipes has been rejected on the sole ground of the impugned goods not satisfying the condition of the RVC addition of 35%. It is his argument that the petitioner have challenged the show cause notices as being issued wholly without and in excess of jurisdiction with a premeditated mind. The petitioners have also challenged the letter dated 05.07.2025 of the Additional Commissioner of Customs, Jaipur whereby all the imports of the copper tubes and pipes have been directed to be cleared without granting the benefit of the AIFTA on a provisional basis upon furnishing of bank guarantee and bond.

87. Mr. Balbir Singh has rebutted the submissions of the learned ASG on the issue of the dispute settlement mechanism under the AIFTA and on the issue of the compliance under Articles 16 and 17 of the AIFTA, by stating that the writ petition are not only challenging the violation of Article 24 of Appendix D of the AIFTA. These petitions have also laid a challenge to the show cause notices since they have been issued after not following the due process of law for verification. The show cause notices at paragraph 6.2 record that the AIFTA does not provide for proper frame work for verification, therefore, the respondents have issued the show cause notices. To this, he submitted that there is no lacuna in the treaty. Assuming even if



there is a lacuna it is for the government to address those shortcomings through proper mechanisms and in the absence of any directions to this effect from the Government of India and its counterparty the AIFTA would still hold ground. It is on this basis that Mr. Balbir Singh stated that the show cause notices have been issued without any authority of law and without jurisdiction.

88. Mr. Singh has pointed out that the respondents have devised and entirely new formula for determining the RVC content on the basis of the production capacity of the exporters. The same is against the defined formulas in the AIFTA read with ROO which only recognise two methods for determining the AIFTA content i.e., RVC namely the direct and indirect method. Such action is *ex facie* contrary to the provisions of the AIFTA read with ROO. Since the petitioners have challenged the show cause notices on various grounds therefore, the submission of the learned ASG that the writ petition are filed only on the account of violation of Article 24 of Appendix D of the AIFTA is incorrect.

89. He submitted the reliance placed on the decisions of *Trafigura (supra)* and *Kothari Metals (supra)* is incorrect and the said decisions are not applicable to the present case since the customs authority had undertaken verification as per the AIFTA and ROO by way of a retroactive check and later a verification visit to assess and the RVC in tin ingots and the genuineness of the COO. However, in the present case the impugned show cause notices have been issued without following the due process of law as stated above and therefore the above decisions are distinguishable.

90. Mr. Singh has raised another issue that the show cause notices have been issued without following the due process of law and the said fact has



been recorded by the High Courts of Gujarat and Rajasthan in their orders dated 27.11.2025 and 26.08.2025, respectively. He further submitted that it is not his case that the customs authorities cannot investigate the genuineness of the COOs or issue show cause notices in the event of non-compliance of the treaty norms. Although the respondents can issue show cause notices only after following the due process of verification of the COOs as per the AIFTA ROO, CAROTAR read with Section 28DA(4) of the Act. Even the instruction No. 19/2022-Customs dated 17.08.2022 and Instruction No. 23/2024-Customs dated 21.10.2024 states that in case of any dispute AIFTA is to be followed and verification or to be in terms of the AIFTA.

91. Articles 16 and 17 of the AIFTA provides the procedure for verification of this COOs to state that the importing party shall request a retroactive check when it has reasonable doubt as to the authenticity of the document or as to the accuracy of the information regarding the true origin of the good in question. The issuing authority shall conduct a retroactive check on the producer/exporter's cost statement based on the current cost and prices within a six months' time frame prior to the date of exportation. The issuing authority is required to respond to the request promptly and reply within three months after the receipt of the request for a retroactive check. In cases where there is reasonable doubt with regard to the authenticity or accuracy of the document the Customs Authorities of the importing country may suspend the provisions of the preferential tariff treatment while awaiting the result of verification. The retroactive check process including the actual process and determination of whether the subject good originate from the said country ought to be completed and the



result communicated within six months. The customs authorities of the importing country may request an importer for information or documents relating to the origin of importing good in accordance with its domestic laws and regulation before requesting for a retroactive check. The request for verification visit to the exporting country may be conducted under exceptional circumstances if the retroactive check is not satisfactory. The verification process needs to be concluded within six months from the date of request for physical verification.

92. Mr. Singh has contended that in the present case admittedly the aforesaid due process for verification of the COOs has not been followed by the customs authorities. In fact the COOs were not verified and the same stand admitted in paragraphs 6.3.3 and 6.3.4 of the show cause notices and the same has been reiterated in the reply filed by the respondent in the writ petition. This according to Mr. Singh goes to show the fact that the respondents have acted in disregard to the procedure prescribed under law by denying the benefits of relevant exemption notification and issuing the impugned show cause notice without any authority and basis.

93. It is his case that Articles 16 and 17 of the AIFTA read with ROO are mandatory and even though the word “*may*” is used in the Articles it is not discretionary or optional, rather the same is obligatory upon the importing country to undertake verification i.e., retroactive check and verification visit before rejecting the benefits under the treaty. Further it is the settled principle of law that the word “*may*” will be treated as “*shall*” in circumstances where the context, purpose and object of the statute indicate that the provision is intended to be mandatory rather than discretionary. He has relied upon the judgments of the Supreme Court in the cases of *Sardar*



Govindrao v. State of M.P., AIR 1965 SC 1222 and *Shri Rangaswami, the Textile Commissioner v. Sagar Textile Mills (P) Ltd., Air 1977 SC 1516*. In the present case the AIFTA read with Section 28DA, CAROTAR and the aforesaid instructions cast and obligation upon the proper officer to verify the genuineness of the COOs in terms of Articles 16 and 17 of the AIFTA read with ROO in case the information provided by the importer is not sufficient or the proper officer is not satisfied. According to him the word “may” has to be read “shall” and verification process as prescribed under the AIFTA read with ROO has to be mandatorily followed by the respondents before the issuance of the impugned show cause notices.

94. According to him the verification process is mandatory has been confirmed by this Court in *Bullion and Jewellers Association vs. Union of India, 2016(335) E.L.T. 639 (Del.)* and *Noble Import Pvt. Ltd. v. Union of India 2015 SCC OnLine Hyd 411* Instruction No. 19/2022-Customs dated 17.08.2022 and Instruction No. 23/2024-Customs dated 21.10.2024 and hence the submission of the respondent that the verification process is optional is not tenable.

95. In any event if it is assumed that the interpretation of the respondent Nos. 1 and 3 is correct then even as per their own interpretation the present case is not sustainable because the customs authority did in fact seek verification and exercised the option or verification through international customs in terms of the instruction and the issuing authority in the exporting country i.e. respondent No. 4 vide its letters dated 16.12.2024, 28.08.2025 and 15.09.2025 has confirmed that the COOs are genuine. According to Mr. Singh the entire argument in relation to the verification of the COO being optional and facilitative in nature is beyond the scope of the impugned show



cause notices. He is of the view that respondent No. 5 has only admitted that lacuna in the AIFTA and as such assumed jurisdiction which has not been conferred upon it. However, no such allegation or any reference has been made in the impugned show cause notices regarding the verification process as being optional. According to him the entire argument advanced by the respondent Nos. 1 and 3 is beyond the scope of the show cause notices in an attempt to better their case.

96. According to him the learned ASG has rewritten the AIFTA by employing a new interpretation of Article 16(a) and 16(b) to justify the actions of the respondents is totally wrong. The treaty clearly provides that for verification of the COOs the importing country has to reach out by way of a retroactive check and the exporting country has to reply to the importing party and this process is to be completed within a period of six months. This entire process must be completed within a maximum period of one year. However, in the present case no verification process was done as stated above and the respondents has suspended the AIFTA from 2023 which is beyond one year. Thus, the action of the respondent in issuing the show cause notice and demanding the bank guarantees is contradicting the verification process provided under the treaty. Hence, the argument that Articles 16(a) and 16(b) being required to conduct the verification process does not stand. According to Mr. Singh, Article 16 of the AIFTA as in Clause 16 of the ROO states that it is not a case where there are two options for verification but rather a two step verification process, wherein the first step is to seek information and the same is optional. In the present case, the information as sought is to be obtained from the exporters and not the importers being the petitioners.



97. He argued that merely because the exporter has provided the information through a law firm does not mean that the respondents are allowed to disregard the due process of law for verification of the COOs provided under the treaty. He submitted that the respondent in paragraph 4 of the show cause notices stated to have reached out to the International Customs Cell for verification of the COOs as per the CAROTAR and Section 28DA of the Act. However, there is no whisper of subsequent development in this regard in the show cause notices and it can be assumed that International Custom Cell has not considered this as a violation of the provision of treaty. Since, there was no response, the respondents have acted *suo moto* without jurisdiction.

98. Mr. Singh has also reiterated his argument that there is no alternate remedy available to the petitioners, since, these petitions pertain to the enforceability of the AIFTA and the consequent denial of the AIFTA benefits and suspension of the same without verification. In this regard, he has referred to the judgment in the case of **Kothari Metals (Supra)** wherein, it was held that where the challenge concerns the efficacy or applicability of an International Treaty, the adjudicating authority under the Act cannot assume jurisdiction. In this regard, he has also drawn an analogy to the orders of the Rajasthan High Court dated 26.08.2025, where similarly placed petitioners have challenged similar show cause notices. He stated that only the High Court would have jurisdiction to entertain matters pertaining to the enforceability of the International Treaties and that there is no alternate remedy other than approaching this Court. He prays that the show cause notices as well as the letter dated 05.07.2023 be set aside.



ANALYSIS AND CONCLUSION

99. Having heard the learned counsel for the parties and perused the record, the first issue which need to be decided is whether the writ petitions are maintainable before this Court, as according to Mr. Venkataraman and other learned counsel for the respondents, the cause of action, if any, has arisen outside the territorial jurisdiction of this Court.

100. On the other hand, Mr Balbir Singh, and Mr Bhandari learned Senior Counsel for the petitioners would submit that as part of cause of action has arisen within the territorial jurisdiction of this Court in as much as in some cases the inland container depots, from where the goods are imported which are subject matter of the notices are in Delhi; some of the petitioners are situated in Delhi; in some cases the notices have been issued from the office of the respondents in Delhi and as such the petitions are maintainable. We have already set out the chart giving the relevant facts on the aspect of the territorial jurisdiction, in paragraph 54 above.

101. We note that in certain cases the goods have been received at ICDs in Delhi; some of the petitioners are situated in Delhi; and in some cases, the show cause notices have been issued from the office of the Customs based at Delhi, as such this Court shall have the jurisdiction to entertain the petitions, but at the same time, we find that there is one petition viz. WP(C) 13004/2025 where the goods have neither been received in Delhi; nor the petitioner is situated in Delhi nor notice has been issued from Delhi. To that limited extent, such petition shall be beyond the territorial jurisdiction of this Court.

102. In so far as the one petition is concerned, noting the fact that we have heard all the petitions (including the above one petition) extensively and as



we are deciding the writ petitions on the plea of Mr. Venkataraman and other counsel for the respondents that the challenge is primarily to the show cause notices and the petitions are pre-mature and petitioners must be relegated to the adjudicating authority for a decision, we deem it appropriate to decide all the writ petitions. The decision in the said petition must not be construed that this Court has accepted the maintainability of the said petition.

103. The submission of Mr. N. Venkataraman is primarily that the challenge in these petitions is to the show cause notices issued by the respondents and as there is no decision on the show cause notices, the petitions are pre-mature and this Court shall not entertain the same and must relegate the petitioners to the adjudicating authority who has issued the show cause notices to follow the process and take a decision. This plea of Mr. N. Venkataraman is appealing to this Court. This we say so, for the reason that similar show cause notices were also subject matter of a batch of writ petitions before the High Court of Rajasthan in ***M/s. Krn Heat Exchangers and Refrigeration Limited v. Union of India & Others, 2026:RJ-JP:15051-DB***, which have been decided by the Court, accepting the plea advanced by the same respondent(s) therein by holding in the order dated 10.04.2026, as under:-

“Learned Additional Solicitor General appearing on behalf of the respondents submits that these writ petitions filed against the show-cause-notices are not maintainable. He further relied upon the judgment passed by the Hon’ble Supreme Court in the matter of M/s Trillion Lead Factory Private Ltd. Vs. Superintendent of Central Tax (Special Leave to Appeal (C) No(s).7101/2026) decided on 27.02.2026, wherein, para No.4, it was held as under:-



“4. It is trite law that no writ lies against an issuance of show cause notice and such writ petition would not be maintainable. This position has been explained to by this Court in the case of Secretary, Ministry of Defence and Others V. Prabhash Chandra Mirdha, (2012) 11 SCC 565 and in the judgment of Commr. Of Central Excise Commissionerate Vs. M/s. Krishna Wax (P) Ltd, Civil Appeal No.8609/2019 disposed of on 14.11.2019 vide paragraph 12.”

Having perused the record, it is an admitted position that the present writ petitions have been filed challenging the show-cause notices. Accordingly, in view of the judgment rendered by the Hon’ble Supreme Court in the matter of M/s Trillion Lead Factory Private Ltd. (supra), the writ petitions stand dismissed.”

104. The law is well settled in terms of the Supreme Court judgment in the case of **Commissioner of Central Excise, Haldia v. M/s. Krishna Wax (P) Ltd., 2019 INSC 1246**, wherein the Court has held:-

“12. It has been laid down by this Court that the excise law is a complete code in itself and it would normally not be appropriate for a Writ Court to entertain a petition under Article 226 of the Constitution and that the concerned person must first raise all the objections before the authority who had issued a show cause notice and the redressal in terms of the existing provisions of the law could be taken resort to if an adverse order was passed against such person. For example in Union of India and another vs. Guwahati Carbon Limited, (2012) 11 SCC 651, it was concluded; “The Excise Law is a complete code in order to seek redress in excise matters and hence may not be appropriate for the writ court to entertain a petition under Article 226 of the Constitution”, while in Malladi Drugs and Pharma Ltd. vs. Union of India, 2004 (166) ELT 153 (S.C.), it was observed:-

“...The High Court, has, by the impugned judgment held that the Appellant should first raise



all the objections before the Authority who have issued the show cause notice and in case any adverse order is passed against the Appellant, then liberty has been granted to approach the High Court...

...in our view, the High Court was absolutely right in dismissing the writ petition against a mere show cause notice.”

It is thus well settled that writ petition should normally not be entertained against mere issuance of show cause notice. In the present case no show cause notice was even issued when the High Court had initially entertained the petition and directed the Department to prima facie consider whether there was material to proceed with the matter.”

105. The ratio in the aforesaid judgment has been reiterated by the Supreme Court in the case of ***M/s Trillion Lead Factory Private Ltd. v. Superintendent of Central Tax, SLP (C) 7101/2026***, the relevant part of which reads as under:-

“4. It is trite law that no writ lies against an issuance of show cause notice and such writ petition would not be maintainable. This position has been explained to by this Court in the case of Secretary, Ministry of Defence and Others v Prabhask Chandra Mirdha, (2012) 11 SCC 565 and in the judgment of Commr. Of Central Excise Commissionerate v. M/s. Krishna Wax (P) Ltd., in Civil Appeal no.8609/2019 disposed of on 14.11.2019 vide paragraph 12.

106. At this stage, we may also refer to the submission of Mr. Singh on the maintainability of petitions at the stage of show cause notice to mean that the due process of verification as envisaged by the treaty and incorporated in the domestic law has not been followed. Whereas Mr. Venkataraman would submit that the AITIGA does not divest India as an importing nation of the sovereign right to protect revenue by investigating and rejecting unjustified



claims of preferential tariff treatment. Rather it establishes a framework for lawful rejection of such claims. The authorities retain jurisdiction to examine and adjudicate origin related issues under domestic law. Therefore, COO is subject to scrutiny and India can deny concessional tariff where goods are found non-originating under AITIGA. He has relied upon the judgment in *Trafigura India Pvt. Ltd. (supra)*.

107. We agree with the submission of Mr. Venkatraman. This we say so, because as contended by Mr. Venkatraman that the language of AITIGA uses the word “may” instead of “shall”, which is indicative that the mechanism for requesting official verification is facilitative in nature and not obligatory. So it follows that the objective of the verification process is verification of fact, which in a given case is not required on the face of evidence emerging through independent investigation including, as in this case, the information given by the exporter through its representative law firm. In so far as the reliance placed by Mr. Singh on the judgment passed by the Supreme Court in the case of *Kothari Metals (supra)* is concerned, the Supreme Court has held that the issue raised regarding the efficacy of Article 24 cannot be adjudicated by the competent authority. It is not such a case in these petitions. Hence the judgment is not applicable. The Gujarat High Court in *Trafigura India Pvt. Ltd. (supra)* while dealing with similar show cause notices issued under the provisions of the Customs Act has also held as under:-

“18. In light of forgoing discussion and delineation, the following propositions could be deduced.

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(x) Non-observance of mechanism for dispute resolution as per AIFTA Article 24 cannot have the effect and consequence



of invalidating the action taken by the Customs authorities under the provisions of the Customs Act. The exercise of powers by them would not render without jurisdiction on such score.

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(xiv) Non-compliance of the time limit for investigatory action under the Operational Procedures would not render the action taken under substantive law, for, the procedural aspects stand subordinate to substantive provisions.”

(Emphasis supplied)

108. Even the Bombay High Court, while deciding the case of **Purple Products Private Limited (supra)** wherein a similar issue arose involving import of tin ingots while referring to the judgement in the case of **Trafigura India Pvt. Ltd. (supra)**, has held as under:-

“51. Incidentally, the Government of India did enact the Customs Tariff (DOGPTA) between ASEAN and Republic of India Rules, 2009 to give effect to the provisions of AIFTA. However, these rules provide no statutory recognition to Article 24, which, according to the Petitioner, contains a specialised dispute resolution mechanism intended to displace the municipal or domestic laws already in force. Therefore, the provisions of Article 24 of AIFTA cannot be said to have formed a part of the domestic or municipal laws or transformed into domestic or municipal laws to seek their enforcement before a domestic or municipal Court.

52. A Division Bench in the Gujarat High Court in **Trafigura (supra)** has summarised the legal position precisely in the context of the invocability of Article 24 of AIFTA by detailed reference to the DOGPTA Rules of 2009. This decision affords answers to most of the issues raised by the petitioners. Even the factual base in the two matters does not differ significantly. In the Gujarat case, the challenge was to the orders holding that there was fraud, suppression and misrepresentation in availing the benefits of the Customs exemption notification in respect of



tin ingots imported from Malaysia. Since there was ample material and the show cause notices suffered from no infirmities, the orders were upheld. In the cases at hand, the challenge is to the show cause notices making the same or similar allegations. The allegations in the show-cause notices have yet to be adjudicated. The primary challenge before both courts was that the Customs authorities were denuded of their statutory powers in such cases due to the specialised dispute resolution mechanism outlined in Article 24 of the AIFTA.

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56. Section 28 of the Customs Act confers ample powers upon the Customs authorities to investigate into and adjudicate upon violations due to misrepresentation, suppression or fraud. Based on the material collected by the Customs authorities, a show cause notice has been issued to the Petitioners giving them full opportunity to explain how there was misrepresentation, suppression or fraud on the issue of RCV. There is no legal or jurisdictional infirmity in the issue of such show cause notices. The provisions of Article 24 of AIFTA do not deprive the customs authorities of their powers or jurisdiction to issue such show cause notices. The Petitioners virtually insist that the treaty provisions prevail over national laws, even though the treaty provisions on which they rely have not been incorporated into any national law. This is clearly impermissible, and the challenge on the lack of jurisdiction to issue the show cause notices cannot be sustained.

*57. Incidentally, we must note the observations made by the Gujarat High Court in *Trafigura* (supra), which express doubts about whether the provisions of Article 24 of the AIFTA would apply at all, given that there was no dispute about the origin of the goods being from Malaysia. The Court noted that the misrepresentation and fraud were not about the origin of the goods, but rather the core aspect related to the misrepresentation and fraud concerning the RCV content. In any event, the decision proceeds to reason that even otherwise, the Article could not be invoked to scuttle the operation of the national laws.*

58. The argument based on the introduction of Chapter VAA in



the Customs Act, effective from 27 March 2020, cannot be accepted. Based on the provisions of Section 28DA, we cannot infer that the pre-amended provisions of the Customs Act, 1962, prevented the Customs Authorities from exercising powers under Section 28 of the Customs Act and investigating cases of misrepresentation, suppression, or fraud. Certain additional powers have now been conferred upon the Customs authorities. But an inference that the earlier powers were insufficient to deal with cases of fraud, suppression or misrepresentation is untenable. This was not even a contention raised initially in the petitions, but is now put forth in an attempt to persuade us not to follow the reasoning of the Gujarat Judgment.

59. Section 28 of the Customs Act is quite exhaustive, it provides that where any duty has not been levied or paid etc. on account of collusion, willful mis-statement, suppression of facts by importer or exporter etc., the competent officer may act within five years from the relevant date and serve a notice on the person chargeable with duty or interest, which has not been paid, the Gujarat High Court has interpreted the provisions of Section 28 and concluded that suppression of facts implicative can be a ground for invocation of the said provision.

60. The arguments about COO being conclusive, etc., have never been elaborated in the pleadings. If Mr. Mishra's submission is correct, then, in several matters concerning imports of Tin Ingots from Malaysia, a detailed investigation revealed the extent of misrepresentation, suppression and fraud. In *Trafigura* (supra), the Gujarat High Court was dealing with a final order made by the Customs Authorities. Based on the materials on record, the Gujarat High Court found no reason to interfere with the factual findings recorded by the authorities and declined to interfere.

61. In the present case, the Customs Authorities are yet to adjudicate the matter, and therefore, it is not for this Court to make any observations that would even remotely prejudice the interest of the Petitioners or the Respondents. However, attempts to stall or prevent the adjudication proceedings, as outlined in the impugned show cause notices, cannot be encouraged when exercising our extraordinary and equitable



jurisdiction under Article 226 of the Constitution.

62. The primary argument that the impugned show cause notices are ultra vires for failing to comply with the provisions of Article 24 of AIFTA lacks merit. The Gujarat High Court has addressed this issue in detail and rejected the identical contention regarding the importation of tin ingots from Malaysia. Mr. Nankani's assertion that the Gujarat High Court failed to consider certain matters is untenable. In any event, even when considering those matters, we see no reason to adopt a view different from that taken by the Gujarat High Court."

(emphasis supplied)

109. At this stage, we may also refer to the judgment referred to by Mr. Balbir Singh in the cases of **Bullion and Jewellers Association (supra)** and **Noble Import Pvt. Ltd.(supra)** to contend that the process which has been laid down under the AIFTA being a mandatory process and such process having not been followed rather a show cause notice has been issued, a writ petition shall be maintainable is concerned, the said judgment has no applicability in the facts of this case, inasmuch as, the issue in the said petitions was only based on Certificate of Origin (COO). Moreover, the said judgement precedes the 2020 amendment through which Section 28DA came into force which has changed the statutory background concerning the procedure to be followed to look into the claims of preferential duty. Hence, it was in that context the Court held the petition to be maintainable.

110. In view of the settled position of law, as noted above, more so, the High Court of Rajasthan on identical notices has dismissed the writ petitions, there is no reason for this Court to take a different view. We are of the view that these petitions filed by the petitioners are liable to be dismissed. We order accordingly. Suffice to state that the petitioners shall be



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at liberty to raise all pleas before the authority considering the show cause notices and it is required for the adjudicating authority to pass a reasoned and speaking order(s). No costs.

V. KAMESWAR RAO, J

VINOD KUMAR, J

APRIL 28, 2026

sr/rk/mk

Signature Not Verified

Signed By: PRADEEP
SHARMA
Signing Date: 28.04.2026
13:41:13

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